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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.3.2006

CORAM

THE HON'BLE MR.JUSTICE R.BALASUBRAMANIAN
AND
THE HON'BLE MR.JUSTICE P.P.S.JANARTHANA RAJA

T.C.(A).No.89 of 2003

M/s.Eastern Produce Co.,
1127, P.H.Road,
Chennai-3. .. Appellant

Vs.

The Income-Tax Officer,
Ward X(1),
Chennai-34. .. Respondent

Appeal under Section 260A of the Income Tax Act, 1961 against the order of the Income Tax Appellate Tribunal, Madras 'C' Bench dated 29.11.2002 in I.T(SS)A.No.60(Mds)/2002 for the block assessment year 1.4.1987 to 24.1.1998. against the order of the Commissioner of Income Tax (Apeals) X Chennai I.T.A. NO. 171/2001-2002 dated 29.01.2002 against the Income Tax Officer Ward X (1) Chennai 34 Block Assessment 1-4-87 to 24-1-1998 dated 27.10.2000

For Appellant : Mr.V.Ramachandran, S.C.
for M/s.Anita Sumanth

For Respondent : Mr.J.Narayanasamy

J U D G M E N T

(Judgment of the Court was delivered by
P.P.S.JANARTHANA RAJA, J.)

This Tax Case Appeal is filed under Section 260 A of the Income Tax Act, 1961, at the instance of the assessee against the order of the Income-Tax Appellate Tribunal dated 29.11.2002. The above appeal came up before this Court and this

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Court admitted the appeal on 14.10.2003 and formulated the following substantial questions of law:

" 1. Whether on the facts and in the circumstances of the case, the Income-tax Appellate Tribunal is right in law in negativing the claim of the assessee for deduction under sec.80 HHC ?
2. Whether on the facts and in the circumstances of the case, the Income-tax Appellate Tribunal is right in holding that the benefit of Sect.80 HHC deduction would not be available to a block assessment for the computation of undisclosed income, since it is not the same as a regular assessment ?
3. Whether on the facts and in the circumstances of the case, the Tribunal is right in law in dismissing the petitioner's appeal without dealing with the contentions specifically raised by the petitioner dealing with the estimate of income ?
4. Whether on the facts and in the circumstances of the case, the Income-tax Appellate Tribunal is right in law in not setting aside the estimate of income which was solely based on a third party assessment which the department has not established to be on all fours with the appellant ?"

2. The facts relating to the above questions of law are as under:-

The assessee is a partnership firm engaged in the business of export of musical instruments made of red sanders wood and granite. A search under Section 132 of the Income-tax Act took place on 24.1.98 in the case of Shri.M.Chidambaram, one of the partners of the above firm. No cash or jewellery was seized from the said Chidambaram. During the course of the search, a sworn statement was recorded from the said Chidambaram that he had exported granite to Italy to the tune of Rs.4,31,309/- on 19.7.96 and on 2.4.97, he had exported musical instrument parts to the tune of Rs.16,61,391/-. Further he had also given a detailed statement showing other exports as under:-

Name of the foreign buyer	Nature of goods	Quantity exported	Date of invoice	Amount in Rs.
M/s.Anderton Ltd. Loability Co. Lugane, Switzerland	Granite Rough Blocks	17.381 cubic metres	19.7.96	4,26,469

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M/s.Indian Trading Co.Ltd., Tokyo, Japan.	Musical Instrument Parts	101 sets	15.2.97	10,63,027
-do-	-do-	156 sets	02.4.97	16,64,099

The above transactions reported by Sri Chidambaram in his sworn statements had been examined. It was found that the export of Rs.4,31,309/- on 19.07.1996 was the same transaction noted as involving Rs.4,27,469/- in the tabular statement mentioned above. Similarly, the transaction of Rs.16,61,391/- made on 02.04.1997 was the same transaction for the amount of Rs.16,64,099/- mentioned in the tabular statement. The difference was on account of bank charges. Hence the overall export to be considered for assessment were the three transactions mentioned in the tabular statement. During the course of the hearing, Sri Chidambaram furnished copies of invoices involving the above three transactions. It was found that all these transactions had been made in the case of the firm M/s.Eastern Produce Company in which he is a partner. Hence, any income arising out of these transactions had to be assessed in the hands of M/s.Eastern Produce Company only. In consequent to the search in the case of Sri.Chidambaram, notice under Section 158 BD was issued to the firm and served on 22.10.98. In response to this notice, the assessee firm furnished return of income for the block period from 1.4.87 to 24.1.98 admitting 'nil' income. The assessing officer completed the assessment by including the undisclosed income for the assessment year 96-97 at Rs.50,405/- and for the broken period from 1.4.97 to 24.1.98 at Rs.3,41,140/-, totalling to Rs.3,91,545/-. While completing the assessment, the assessing officer disallowed the deduction claimed under Section 80 HHC of the Act and also estimated the income on the basis of the other assessee doing the same business of exporting musical instruments.

3. Aggrieved by the order of the Assessing Officer, the assessee filed an appeal before the Commissioner of Income-tax (Appeals), who dismissed the appeal and confirmed the order of the Assessing Officer. Aggrieved by the same, the assessee again went on appeal to the Income Tax Appellate Tribunal. The Appellate Tribunal also dismissed the appeal and confirmed the orders of the lower authorities.

4. The learned Senior Counsel appearing for the appellant/assessee submitted that the authorities below were not justified in rejecting the claim of the appellant under Section 80 HHC and further contended that the assessee had raised a specific contention that the estimated income made in this case

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at 20.5% was arbitrary and high and the comparitive cases relied on by the revenue had never been put to the assessee and the similarity had not been established. Further it was stated that the Tribunal had actually omitted to give any finding on the said contention. The learned counsel appearing for the Revenue submitted that the orders passed by the authorities below were in confirmity with law.

5. Heard the learned counsel appearing for both sides. After the amendment to Section 158BB with retrospective effect from July, 1995, a block assessment made under the provisions of Chapter XIV-B would have the benefit of Chapter VI.A deductions, which includes Section 80 HHC. In the case of ANBU TEXTILES v. ASSISTANT COMMISSIONER OF INCOME-TAX [(2003) 262 ITR 684], this Court considered the amended provision and held as follows:-

> " It is clear that Section 158 BB of the Act was amended with full retrospective effect, from July 1, 1995, and under the amended provision, the undisclosed income of the block period shall be computed in accordance with the provisions of the Act, and therefore, the provisions contained in Chapter VI-A of the Act should also be taken into consideration in determining the undisclosed income of the block period. It is true that the Appellate Tribunal decided the matter on the basis of law then existing. The amendment came into force only by the Finance Act, 2002, with retrospective effect from July 1, 1995. Since the amendment has been given retrospective effect, we are of the view, the provision, as amended, would be proper provision for determining the undisclosed income of the block period. We are therefore of the view that the Appellate Tribunal should go into the question whether the assessee is actually eligible to claim deduction under section 80 HHC of the Act as the Appellate Tribunal had no opportunity to decide the said question. Accordingly, the appeal is allowed and the order of the Appellate Tribunal is set aside and the matter is remitted back to the Appellate Tribunal to decide the question whether the assessee is eligible to claim deducation under section 80 HHC of the Act on the merits of the case. "

6. In the present case, the Tribunal had not considered the amended provision, eventhough the order is passed after the amendment of the provision. The relevant portion of the Tribunal order is as follows:

> "Explanation to Sec.158BB of the Act indicates that the total income and loss of each of the previous year shall be that total income or loss as computed without

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giving set off of brought forward loss under Chapter VI or unabsorbed depreciation under sub-sec(2) of sec.32. There is no mention about deduction under sec.80HHC of the Act. The assessment that is made with regard to undisclosed income is not the same as regular assessment and therefore the claim of the assessee that sec.80HHC deduction should have been considered is rejected."

Hence, it is clear from the above that the Tribunal had not considered the amended provision of law. Following the judgment cited supra, we remit back the Question Nos.1 and 2 to the Appellate Tribunal to decide whether the assessee is eligible to claim deduction under Section 80HHC of the Act on the merits of the case.

8. Now, we take up the Question Nos.3 and 4. Regarding the same, we find that the Tribunal had omitted to give any finding, eventhough the same was specifically raised in the grounds before the Tribunal, and the above fact is not disputed by the Revenue. In respect of Question Nos.3 and 4 also, we remit back to the Tribunal with a direction to rehear the matter afresh after giving opportunity to the parties.

9. In view of the above reasoning, we set aside the order and remit the matter back to the Income Tax Appellate Tribunal. With the above direction, the tax case is disposed of. No costs.

km/sra

Sd/
Asst.Registrar

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Sub Asst.Registrar

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To

1.The Assistant Registrar,Income Tax Appellate Tribunal
Madras Bench "c".

2.The Secretary, Central Board of Direct Taxes, New Delhi.

3.The Commissioner of Income Tax (Appeals) X, Chennai.

4.The Deputy Commissioner of Income Tax, City Circle-VII (Inv.),
Chennai.

5.The Income Tax Officer, Ward X (1) Chennai - 34

+ one cc to Pushya Sitaraman, Advocate sr no. 13745

NA(CO)
NM(17.04.2006)

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